

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA08-410

FAULKNER COUNTY JUDGE &  
ASSOCIATION OF ARKANSAS  
COUNTIES

APPELLANTS

V.

HAROLD A. SMITH

APPELLEE

**Opinion Delivered** October 8, 2008APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
[F607895]

AFFIRMED

**DAVID M. GLOVER, Judge**

The sole issue in this workers' compensation case is whether appellee, Harold Smith, was acting within the course and scope of his employment when he was run over by a vehicle and suffered injuries on June 20, 2006. The administrative law judge (ALJ) determined that Smith was acting within the course and scope of his employment at that time, that the injury was compensable, and that Smith was entitled to temporary total disability from February 21, 2007, to a date yet to be determined. The Commission affirmed and adopted the ALJ's opinion as its own. Appellants now appeal, arguing that the Commission erred in finding that Smith had established by a preponderance of the evidence that he sustained a compensable injury and was acting within the course and scope of his employment at the time of the accident. We affirm the Commission's grant of benefits to Smith.

### *Standard of Review*

In *Tyson Foods v. Disheroon*, 26 Ark. App. 145, 146-47, 761 S.W.2d 617, 618-19 (1988) (citations omitted), this court set forth the standard of review concerning the sufficiency of the evidence:

In workers' compensation cases, the Commission functions as the trier of fact. The credibility of witnesses and any conflict and inconsistency in the evidence is for the Commission, as the trier of fact, to resolve. The Commission has the right to believe or disbelieve the testimony of any witness. On appeal to this court, when the issue is whether the Commission's findings are supported by substantial evidence, we must view the evidence in the light most favorable to those findings and give the testimony its strongest probative force in favor of the Commission's action. The Commission's decision is entitled to the weight we give a jury verdict. Substantial evidence is more than a scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. There may be substantial evidence to support the Commission's decision even though we might have reached a different conclusion if we sat as the trier of fact or heard the case de novo.

### *Hearing Testimony*

At the hearing, Smith testified that he was a certified sheriff's deputy who had worked for the Faulkner County Sheriff's Office from January 1, 2003, until February 2007. Smith said that it was his job to train new recruits, and that he also handled transports to the Arkansas Department of Correction. He testified that as a full-time certified deputy sheriff, he was legally bound and sworn to uphold the laws of Arkansas, to render aid to anyone who needed it, to arrest anyone who was committing a crime in his presence, and to serve any bona fide warrant issued by a court. He testified that he had a gun and a badge, that on appropriate occasions he would wear a uniform, and that he might occasionally drive a department-owned vehicle. He said that it was common knowledge in his neighborhood that he was a sheriff's deputy. Smith testified that he was unaware of any policy stating that he was

not authorized to perform his duties as a certified deputy sheriff when he was off duty.

With regard to the accident on June 20, 2006, Smith recounted that he and his wife had retired to bed at their house in Greenbrier, but that the neighbors' music was playing loudly, so he got out of bed, got dressed, and told his wife that he was going to ask the neighbors to turn down their music. He testified that when he walked out the door and got past a tree, he saw a man "beating the crap out of a woman" in the driveway, and he yelled to his wife to call 911. Smith said that he went across the street, and the man jumped into his truck and began driving backward. He said that he identified himself as "Sergeant Smith with the sheriff's department," but the man backed down the street twenty-five to thirty feet away and sat there, gunning his engine. Smith said that he then heard the truck "pop" into gear, and the man "floored" the gas, "squalled" his tires, and headed toward him. Smith tried to jump out of the way but slipped, and the front passenger tire hit his leg and the truck rolled over him.

On cross-examination, Smith said that he initially went outside because of the neighbors' loud music, but that when he got outside, he saw a man beating a woman in the driveway, and that he believed he "had to do something" as a deputy sheriff. When questioned about his previous deposition testimony, Smith said that he stated in his deposition that he saw an individual backing out in a truck and a lady was yelling at him; that he identified himself; and that the driver charged him with the truck and hit him. In his deposition, Smith also stated that on the night of the accident, the man driving the truck had committed domestic battery but that he did not know it at the time. Smith acknowledged

that his primary duties were at the jail, and that he had never been called from the jail to make an arrest. Smith said that he was unaware of the sheriff department's policy that he should have called Greenbrier police for a city problem. He explained that he did not know that there was a crime in progress until he walked into it, which was why he was not wearing his uniform or have his gun or badge.

Sheila Smith, Smith's wife, testified that on the night of the incident, Smith got out of bed to go ask the neighbors to turn down their music. She said that as she watched from the front door, Smith yelled to her to call 911. She said that she could not see what was going on because a tree in their yard blocked her view, and that she did not know Smith had been hit until she heard someone yell at the driver that he had just hit someone. Sheila Smith said that Smith was going to the neighbors' house because the loud music was keeping them from sleeping, and that no one had called and asked him to come over.

There was also deposition testimony introduced from several officers regarding policies within the department. Bob Brown, the jail administrator, testified that department policy was that you do not investigate something someone else would be called to, and that you do not get involved in family disturbances or any kind of disturbance in your neighborhood, and that that policy had been in effect since 1970. John Randall, the assistant jail administrator, testified that he had the authority to investigate a disturbance involving his neighbors, but that he could not do so because department policy prohibited him from getting involved in a neighborhood dispute. Randall said that the only thing he could do in a neighborhood disturbance was to be a good witness and call the local law enforcement. Randall said that

none of the detention officers, of which Smith was one, had the authority to make arrests on or off duty, and that it was not one of Smith's employment duties to quell disturbances.

Jason Bell, a lieutenant with the sheriff's office who was also over the training program in a position similar to Smith's, testified that he was on duty pretty much twenty-four hours a day, and that if he was out in the community and saw a crime being committed while he was not on duty, he would have the authority to make an arrest. Bell said that if there was a disturbance in his neighborhood he could use his authority to look into it, whether or not he was on shift or had his badge, and that he was performing employment services in spite of the fact that he was not on duty. It was Bell's opinion that Smith was performing an employment service when he went across the street after he saw a man beating a woman to see what was going on and was injured in the process. Bell stated that he was unaware of any policy that stated there was no authority to do such a thing when you were off duty. On cross-examination, Bell stated that he considered himself to be on duty at all times, and even though it was preferred to let the police handle a crime if it occurred in the city limits, as a sworn law officer, he had taken an oath to serve and protect and if a crime is committed in his presence, if a human life was at stake, he would act upon it.

Rick Beavers, a lieutenant who supervises the 309 trustees at the detention facility, testified that he was a certified deputy and carried a badge, which was a symbol of his authority. He said that a certified deputy had all of the arrest powers that any deputy had anywhere in the county. Beavers said that the policy was if they were off duty, they were to be the best witnesses that they could be; however, he also said that if he saw his neighbor

killing his wife, that he would “jump in the middle of that in a New York instant.” Beavers said that he would get involved if he knew or suspected that it was a life-threatening event because he felt that it was his duty, but for a loud disturbance across the street he would have called the Greenbrier Police Department. Beavers said that it was generally true that the sheriff’s department did not interfere with matters in the city unless the city requested help.

In Smith’s deposition, taken on June 21, 2007, he stated that at approximately 10:30 p.m. on June 20, 2006, he and his wife were in bed and there was loud music, screaming, and yelling going on across the street. Smith said that he went over to ask the neighbors to turn down the music, and when he walked across the street, an individual got into a pickup truck and backed out. Smith said that a lady was screaming at the man, and that he identified himself to the man, who just backed down the street, stopped, and looked at Smith. Smith said that the man then charged with the truck and hit him.

In his deposition, Smith said that his primary duties were at the jail, and that he did not have his gun or identification when he tried to talk to the driver. However, he stated that he had full arrest powers at the sheriff’s department, even though it was not part of his job to try and catch burglars unless it was a crime committed in his presence. Smith said that the man who ran over him was committing domestic battery before he ran over him, but that he did not know that at the time he went over there.

#### *ALJ Opinion*

The ALJ found that Smith was acting within the course and scope of his employment

at the time of his June 20, 2006 injury and awarded him temporary total disability benefits from February 21, 2007, to a date yet to be determined. The Commission affirmed and adopted the ALJ's opinion as its own. In arriving at this determination the ALJ found:

Although it is a close question, the claimant's purpose for going to his neighbor's residence may have been personal in nature. However, once within visual range of the neighbor's residence, the claimant encountered an undisputed physical domestic dispute. This disturbance constituted a serious criminal offense or threat to life requiring the claimant to act in his official capacity as a law enforcement officer. The claimant's activities at this point were clearly consistent with advancing his employer's interest as conservator of the peace in the county and upholding and preserving the laws in this state.

With respect to the claimant being off-duty at the time of the incident. Five deputies gave deposition testimony, four of them specifically testified regarding the powers and duties of a deputy sheriff. The testimony of these witnesses essentially corroborated the claimant's testimony that he had a sworn duty to preserve the peace, is considered on duty 24 hours a day, and that he has full arrest powers within the county, which would include Greenbrier. The fact that the claimant was off-duty does not relieve him of his obligation to preserve the peace.

Therefore, under these circumstances, I find that the claimant was acting within the course and scope of his employment at the time of his June 20, 2006 injury.

While I recognize there was testimony alleging department policies which would prohibit a deputy sheriff from getting involved in neighborhood disputes and investigating matters within the city limits of Greenbrier; however, there was conflicting and confusing testimony among the deputies concerning these policies, and no written proof of these policies were presented during the hearing. As such, I find that there is insufficient evidence to support a finding that any such policies existed at the time of the claimant's injury or that he violated any departmental policy for that matter, during his attempt to quell this physical domestic dispute.

#### *Argument and Analysis*

On appeal, appellants argue that Smith's injury was not a compensable injury because he was not acting within the scope and course of his employment when he was injured. In support of this argument, they cite *Maupin v. Pulaski County Sheriff's Department*, 90 Ark. App.

1, 203 S.W.3d 668 (2005), a case in which this court affirmed the denial of benefits to a Pulaski County sheriff's deputy who was injured in a traffic accident in Perry County. Appellants also argue that there was a departmental policy prohibiting Smith from getting involved in the next-door domestic disturbance, and that Smith's deposition testimony contradicts his testimony at the hearing.

A "compensable injury" is an accidental injury causing internal or external harm to the body, arising out of and in the course of employment, which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(I) (Supp. 2007). A compensable injury does not include an injury inflicted upon the employee at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). The same test is used to determine when an employee is performing "employment services" as to determine whether an employee was acting "within the course of employment"—that test is "whether the injury occurred 'within the time and space boundaries of the employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly.'" *Pifer v. Single Source Transportation*, 347 Ark. 851, 857, 69 S.W.3d 1, 4 (2002) (quoting *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999)).

Appellants argue that Smith was on personal business when he went across the street to ask the neighbors to turn down their music. They point out the inconsistencies in Smith's deposition testimony as compared to his testimony at the hearing, arguing that in his deposition testimony, Smith stated that he did not know the driver of the truck had

committed domestic battery until after the fact, while he testified at the hearing that the man was “beating the crap” out of a woman and he attempted to stop it.

We hold that while Smith’s reason to leave his residence may have been personal in nature, it became work-related when he encountered an incident of domestic abuse after he began to cross the street. With respect to any inconsistencies in Smith’s deposition testimony and his testimony at the hearing, those were for the Commission to resolve, as all of that evidence was before the Commission when it made its decision to grant Smith benefits. See *Tyson Foods v. Disheroon, supra*.

Appellants also argue that this case should be reversed based on *Maupin v. Pulaski County Sheriff’s Office, supra*. We find *Maupin* to be distinguishable. In that case, a Pulaski County sheriff’s deputy was injured in a traffic accident in Perry County as he was commuting to work in his personal vehicle. He had no authority to conduct official police business in Perry County, and at the time of the accident, he was not on duty. Although not required to do so, Maupin was dressed in his uniform and was listening to his police radio prior to beginning his shift. He claimed that he was performing employment services at the time of injury; the Commission denied his claim, and this court affirmed the denial of benefits, holding that “the Commission could reasonably conclude that appellant’s injury was sustained at a time when employment services were not being performed.” 90 Ark. App. at 6, 203 S.W.3d at 671.

In the present case, although Smith was not on duty, he was present in his jurisdiction, and he walked into a domestic disturbance. He yelled for his wife to call 911, and he

identified himself as a Faulkner County sheriff's deputy, at which time the driver of the truck ran over him. As the ALJ found, Smith, as a certified deputy, had a sworn duty to preserve the peace, was considered to be on duty twenty-four hours a day, and had full arrest powers within the county, including Greenbrier, and the fact that the claimant was off duty did not relieve him of his obligation to preserve the peace. As for the "policy" of not getting involved in neighborhood domestic disputes, appellants did not present any written document stating this policy, and Smith testified that he was unaware of such a policy, even though he was a training officer and responsible for training new recruits. We hold that there is evidence from which the Commission could reasonably conclude that Smith's injuries were sustained within the scope and course of employment.

Affirmed.

BIRD and GRIFFEN, JJ., agree.